

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

RCRev..No. 476 OF 2005()

RCA.154/1998 OF THE RENT CONTROL APPELLATE AUTHORITY,
THALASSERY

RCP.265/1997 OF RENT CONTROL COURT, KANNUR

PETITIONER/APPELLANT/RESPONDENT

BHASKAR, S/O.KANNAN,
PRAKASH TANSPORT, KANNUR-2.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA

RESPONDENT: RESPONDENT/PETITIONER

M.K.SURENDRAN, S/O.LATE M.K.KRISHNAN,
MANAGING DIRECTOR OF ASAL MALABAR BEEDI,
OPPOSITE FENNER INDIA - MADEKKAL ROAD,
KOCHOOBOLI, MADURAI.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.K.SUMOD

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 26/03/2007, THE COURT ON 13.4.2007, PASSED THE
FOLLOWING:

RCR 476/2005

ORDER ON I.A. NO. 2435/2005 IN R.C.R. 476/2005

// DISMISSED //

13.4.2007

SD/-
P.R. RAMAN, JUDGE.

SD/-
ANTONY DOMINIC, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN & ANTONY DOMINIC, JJ.

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R.C.R. NO. 476 OF 2005

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DATED THIS, THE 13TH DAY OF APRIL, 2007.

ORDER

Raman, J.

Tenant is the revision petitioner. The respondent herein, as the landlord of the petition schedule building, filed R.C.P. 265/1997 before the Rent Control Court, Kannur, seeking eviction of the revision petitioner under Section 11 (3) of Act 2/65. It was the case of the landlord that his son Mahesh was studying for M.B.A. course after completing B. Com. Degree and he is proposing to start a wholesale business in Asal Malabar Beedi at Kannur and he is depending on the petitioner for the petition schedule building for the said purpose. It is pleaded that the building is therefore required bona fide for the business purposes of the landlord's son and that no other building is available. After issuing notice to vacate the premises, the landlord filed the petition for eviction.

2. The tenant on the other hand, contended that the alleged need is not bona fide, that the landlord's son is not likely to carry on the business at Kannur and he has no such need, that he will continue his

academic career by joining higher studies, that his idea is to secure a qualified professional degree to join blue chip companies or other prominent business organizations, that he is not depending upon his father for the building, that the petition schedule building was taken on lease by the tenant for using the same as a workshop for the transport business being conducted by him, that the building is an integral part of his transport service which is the main source of income for his livelihood, that he has no other income, that he was running the bus service as a proprietary concern which was later converted into a partnership concern, admitting all his children as partners, the firm has nine buses and the workshop conducted in the petition schedule premises is essential for the daily maintenance of the buses, he has employed mechanical staff, that no other suitable building is available in the locality and no other building is in his possession to transplant his business and that the bona fide need alleged is only a ruse for eviction when he did not heed to the unreasonable demand for rent.

3. The evidence in the case consists of the oral testimony of PWs 1 and 2 besides Exts.A1 and A2 on the side of the petitioner/landlord and the oral testimony of RWs 1 and 2 and Exts.B1 to B8 on the side of the respondent/ tenant. After evaluating the evidence on record, the rent

control court found the bona fide need pleaded as true and ordered eviction. On appeal by the tenant, filed as R.C.A. 154/1998, the appellate authority also confirmed the said view and dismissed the appeal against which the present revision is preferred.

4. It is contended by the learned counsel for the revision petitioner that the approach of the courts below in a matter like this, is improper and erroneous and that the appellate authority did not consider the points in controversy independently. According to him, the landlord's son is continuing his studies and his idea is to secure highly qualified professional degree to join blue chip companies. According to him, the landlord's son will never start a beedi business in the petition schedule building and that he is not dependent upon the landlord for the purpose of the building.

5. The Rent Control Court, after analyzing the evidence in the case found that the landlord, when examined as PW.1 has deposed that he was working in the beedi industry 25 years back at Kannur, that due to loss, he shifted his business to Madurai, that there he started a beedi industry by name 'Asal Malabar beedies', that he was the Managing Director of that industry at the time of filing the rent control petition, that he has shares in the said industry and that PW.2 intends to start a whole sale business of that industry at Kannur. PW.2 has deposed that even though he has not

done any market survey, on enquiry, he understood that there is scope for wholesale agency of Assal Malabar beedies at Kannur. According to the court below, merely because PW.2 is having an MBA degree, the same is not a disqualification to start a business in beedi and on the other hand, his qualification in the business line would place him in a better position to do the proposed business in a systematic manner. Merely because they are settled at Madurai, there is no reason to hold that the bona fide need as put forth by the landlord is not true. The appellate court also re-appreciated the evidence in the light of the decision of this Court in **Kurian v. Prathapan** (1999 (2) KLT 248) and found that merely because PW.2 is possessed of an MBA degree is no reason to hold that he would not intend to start a business of his own in the petition schedule premises. PW.1 in his cross examination, has deposed that his another son is doing beedi business at Madurai.

6. We have carefully gone through the orders passed by the court below as affirmed by the appellate authority. The mere fact that PW.2 is having an MBA degree is not certainly a disqualification to conduct a business in the same line as his father is doing at Madurai. It is not the trite law that acquisition of a higher degree in business administration would lead to any inference that one should go for employment under somebody.

If PW.2 wanted to make use of his professional qualification in the line of business he wants to start at Kannur by opening a wholesale business agency, there is nothing irrational or illogical in the need as put forth by the landlord. Further, it should be appreciated that PW.1 the landlord has sufficient experience in the said business and his another son is already doing the same business at Madurai. If PW.2, after acquiring necessary qualification in business administration, thought it fit to start a business of his own, at Kannur, in the tenanted premises, we cannot hold that such a need as put forth by the landlord is bereft of any bona fides. On the other hand, it only supports the plea of bona fide need for starting a business. The concurrent finding of bona fide need by the courts below cannot be said to be perverse or contrary to the evidence in the case.

7. We are of the view that the finding of the courts below does not call for any interference by this Court in its revisional jurisdiction under Section 20 of the Kerala Buildings (Lease & Rent Control) Act.

8. The next question to be considered is regarding the benefit of the second proviso to Section 11(3) of the Act. It has got two limbs, the burden of which lies on the tenant to prove. It is for the tenant to establish on evidence that he is mainly depending on the income derived from the business carried on in the tenanted premises and further that there is no

other alternate building available to shift his business. In this regard, the tenant has not produced any materials on record to show that the work shop conducted in the tenanted premises is the main source of income upon which he is depending for his livelihood. As such, it cannot be said that he is solely dependent on the income from the workshop conducted in the tenanted premises. Further, admittedly, his case is that he is a partner in a firm which is conducting a business in operation of buses, which requires a workshop and the income from the bus operation is his sole income. First of all, the bus operation is conducted by a firm of which the revision petitioner is a partner whereas the licence of the workshop is in his individual name. Secondly, it cannot be said that the income derived from the workshop is the main source of income or the sole income of the revision petitioner. To the question as to whether the workshop is absolutely required for carrying out the operation of buses, the tenant, while examined as RW.1, himself has deposed that bus operators usually have a workshop of their own and if the vehicles are given to other workshop, he may not get them repaired as per the schedule and he will not get quality spare parts of the vehicles and giving the vehicles for repairs to outside workshops is more expensive. Therefore, his evidence would clearly show that for carrying on the operation of buses, it is not as though a workshop is

a must. Further, the workshop where the repairs of the buses are carrying on cannot be said to be a part and parcel of the buses, that too, run by a firm of which the revision petitioner is a partner.

9. In this regard, this Court in **Hassan v. Mohammed** (1994 (1) KLT 502) while dealing with the second proviso to Section 11(3), held that if a tenant does not belong to the weaker section of the society, he will not be entitled to get the benefits of the second proviso to Section 11(3) of the Act. In this case, the revision petitioner is a partner of a bus service having nine buses. It cannot be said that he is a person belonging to weaker section. The second proviso of Section 11(3) is intended to confer a benefit from being evicted when the tenant is mainly depending on the income from the business carried on in the tenanted premises. By no stretch of imagination, it can be said that the income derived from the workshop is the main source of income of the revision petitioner. First of all, no such evidence is adduced. Secondly, when he is admittedly a partner of a firm conducting bus service, he cannot be heard to say that the income derived as the licensee of the workshop is the main source of income for his livelihood.

10. In **Kunhiraman Nair v. Madhavi** (2002(2) KLT 10) this Court held that the word 'mainly' means chiefly, absolutely and entirely, firstly,

principally, largely etc. and the mere statement that the tenant is getting income from the business is not sufficient. It is for the tenant to prove that he is principally and chiefly depending upon the income derived from the trade carrying on in the petition schedule building and the mere claim of higher rent cannot be a ground to defeat the claim of the landlord under Section 11(3). In Kalliani Amma v. Sarojini Amma (2004 (2) KLT 976) it was held that the Rent Control Court is not expected to make an enquiry as to whether if the business is shifted to the new building the business would generate the same income which the tenant used to generate from the business or trade conducted in the tenanted premises. In **Francis v. Sreedevi Varassiar** (2003(2) KLT 230) (F.B.) this Court held that the second proviso carves out an exception to the rule embodied in Section 11 (3) and the burden of proving the relevant facts lies on the tenant. The tenant has to prove that he is depending on the income from the trade or business being carried on by him in the premises in dispute for his livelihood. He has to further prove that suitable accommodation is not available for shifting his business.

11. Even though the learned counsel for the revision petitioner relied on the decision of this Court in Abdul Majeed v. Nanu Krishnan (1985

KL T 261), we do not find that the said decision has any application to the factual matrix of the case. We have already dealt with on facts, and found that the licence of the workshop, stands in the name of the petitioner whereas the bus service is conducted by the firm of which the petitioner is a partner and it cannot be called as an integral part of the bus service.

Both the courts below have concurrently found that the revision petitioner is not entitled to the benefit of the second proviso to Section 11(3). As regards the alternate building also, the revision petitioner has not discharged his burden of proving the same. We find no merit in the revision and the same is dismissed.

12. AT this stage, the learned counsel for the revision petitioner prayed for some time to surrender vacant possession of the tenanted premises. We have heard both sides. In the circumstances, we grant three months time to the revision petitioner to surrender vacant possession of the petition schedule building on condition that he shall file an undertaking before the court below on or before 30.5.2007, along with the entire arrears of rent, if any, as on today, to the effect that he shall continue to pay an amount equivalent to the monthly rent by way of compensation for use and occupation until vacant possession is given, that he shall not induct any third parties and that he shall give vacant possession of the premises on or

before 13.7.2007. If he commits default in complying with any one of the conditions as aforesaid, the landlord will be at liberty to move the court below with the execution steps.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-